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Elaine/Lisa

Approvals: John Mulderig, Charles Wall

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TALLAHASSEE, Fla.—A circuit judge here declared key provisions of the controversial 1994 amendments to the state's Medicaid Third-Party Liability Act unconstitutional and held that the state agency charged with administering the state's Medicaid program is unconstitutionally structured.

Charles Wall, senior vice president and deputy general counsel for **Philip Morris Companies Inc.**, said the ruling should provide the basis for the dismissal of a claim by the state of Florida. The June 28 ruling came in a declaratory judgment case filed by the Associated Industries of Florida, Philip Morris Inc. and others.

"Because the court ruled that the state agency is unconstitutionally structured, we believe that the claims based on the Florida Third-Party Medicaid Liability Act should now be dismissed," says Wall. That suit, filed by the state of Florida to recover Medicaid costs for treating alleged smoking-related illnesses, is pending in circuit court in West Palm Beach.

In his ruling, Judge F.E. Steinmeyer said the law may only be applied to future activities—"specifically, to conduct of potential third-party defendants that occurred after the amendments' effective date of July 1, 1994. No party shall be held liable under the amendments for conduct or activities that occurred before July 1, 1994."

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"This could well be the beginning of the end of this lawsuit by the state of Florida," says Wall. "The state's claims governed by the new Medicaid law are essentially based on allegedly wrongful acts occurring before the law's effective date and therefore cannot be the basis for any finding of liability."

Also important, according to legal observers, is the fact that the court declared unconstitutional the new law's provision that allowed the state to join in a single lawsuit hundreds—or even thousands—of claims for Medicaid reimbursement without even identifying the injured Medicaid recipients. Judge Steinmeyer ruled that these provisions "impermissibly infringe on the exclusive power of the judiciary." In addition, the judge struck other portions of the new Medicaid law that attempted to direct judges to interpret Florida law in a manner favorable to the state.

"The Florida statute was a blatant attempt by Gov. Lawton Chiles and the plaintiff's lawyers to stack the deck in the state's favor any time it chose to bring a lawsuit to recover Medicaid expenditures," Wall says. "This new ruling goes a long way towards correcting that improper attempt."

~~However, PM does disagree with the portions of the ruling that uphold the Florida statute's provisions barring traditional legal defenses such as the argument that people have chosen to smoke despite knowing the risks, says Wall.~~

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